IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO.2874/2007.

J.D.A.
Vs.
Ratan Chand Kastiya and ors.
Date of order : 27/4/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Rinesh Gupta for the petitioner.

******

Heard learned counsel for the petitioner.

The petitioner is challenging the order dated 14/7/2004 passed by the Divisional Commissioner Jaipur whereby the appeal preferred by respondents No.1 to 3 under Section 90B(7) of the Land Revenue Act, 1956 against the order of the prescribed authority Deputy Registrar Zone B-2 J.D.A. dated 6/12/1999 has been allowed. Learned Divisional Commissioner has allowed the appeal on the ground that although notice under Section 90B for

resumption of the land of respondents No.1 to 3 was issued on 30/11/1999 but there was no proper service of the notice. The notice ought to have been served personally yet it was served through newspaper publication, that was passed on 16/11/1999. In that situation, ex-parte order was passed against respondents N.1 to 3.

Learned counsel for the petitioner argued that the Divisional Commissioner erred in law in setting aside the order of resumption and proper course for him would have been to remand the matter as he was convinced that opportunity of hearing was not provided to respondents No.1 to 3.

Having heard learned counsel for the petitioner, I find that the order of resumption dated 6/12/1999 was set-aside only on the ground that respondents No.1 to 3 were in possession of the land in dispute as Inderchand Heerawat, father of respondents No.2 and 3, had purchased the disputed land vide registered sale-deed. Prescribed Authority passed the order without inspecting the site of the land or making any such report on the basis of the

site inspection. The Division Commissioner therefore found the order unsustainable and accordingly set-aside the same. Even if the order earlier passed under Section 90B(7) was set-aside on the ground of opportunity of hearing not being provided to respondents No.1 to 3, if the petitioner still finds that the land is liable to be resumed by recourse to Section 90B(7) of the Land Revenue Act, 1956, they can even now proceed afresh after issuing notice to respondents No.1 to 3. The order of the Divisional Commissioner has not created any embargo on their powers to do so.

I do not find any error in the order passed by the learned Divisional Commissioner.

The writ petition is therefore dismissed though with the aforesaid clarification.

(MOHAMMAD RAFIQ), J.

anil